IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6665 of 2001
With
CIVIL APPLICATION No. 10232 of 2005
In
SPECIAL CIVIL APPLICATION No. 6665 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DINESHKUMAR MOHANLAL SHETH - Petitioner
Versus
VADODARA MUNICIPAL CORPORATION & 3 - Respondents

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Appearance :
Petitioner as Party-in-person.
MR PRANAV G DESAI for Respondent Nos. 1 - 2.
MR LB DABHI, AGP for Respondent Nos. 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 24/02/2006

COMMON ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 of the Constitution of India praying for the direction to the respondents to pay the petitioner all back wages, allowances, fees etc. for entire period of the petitioner's absence from duty as well as the period spent on duty and all other regular service benefits etc., if any, as Food Inspector with 18% compound interest w.e.f. 04.12.1997. The petitioner has also prayed for the similar relief w.e.f. 30.05.1995 maintaining seniority of the petitioner in the cadre of Food Inspector.

2.This Court has passed an order on 17.08.2001 issuing notice. However, there was no reference with regard to the interim relief

which was prayed for by the petitioner in this petition.

3.The petitioner, therefore, filed L.P.A. No. 1191 of 2001 before this Court. While dismissing the said appeal on 07.11.2001, the Division Bench has observed that the order of the Learned Single Judge does not indicate whether the petitioner had pressed for interim relief. In any case, looking to the interim relief prayed for in terms of prayer clause 10 (A), such a relief cannot be granted at that stage. The Division Bench has also observed on the basis of the submissions made by the petitioner appearing as party-in-person that if the interim relief as prayed for was not granted, the appellant would be required to join as a Junior Clerk and all his rights and contentions raised in the main petition were likely to be prejudiced, if he resumed his duty as a Junior Clerk. The Division Bench,

therefore, made a clarification that it will be open to the appellant to resume duty as a Junior Clerk without prejudice to his rights and contentions raised in Special Civil Application No. 6665 of 2001. The Court has also observed that it would be open to the appellant to move the Learned Single Judge for fixing an early date of final hearing.

4.This petition has, thereafter, come up for hearing before this Court on 30.01.2002. The Court has observed in the order dated 30.01.2002 that after the matter was heard for some time, the petitioner appearing as party-in-person has submitted that he was likely to get another advocate from the Legal Aid and, therefore, reasonably long time may be given so that the learned advocate, who was assigned by the Legal Aid, would prepare himself in the matter. The matter was, therefore, adjourned to 01.03.2002. The Court has also suggested the

petitioner that if he was ready to resume work as Junior Clerk without prejudice to all his rights and contentions, the Corporation may be persuaded to give him work as Junior Clerk immediately so that he starts getting his salary, to which, the party-in-person has declined and said that he would be able to pull on by borrowing amount as loans.

5.During the pendency of this petition, the petitioner has moved Civil Application No. 3404 of 2002 praying for the direction to the respondent authorities to pay monthly consolidated amount to the applicant neither as a Food Inspector grade nor the subsistence allowance as Jr. Clerk regularly till the final outcome of Special Civil Application No. 6665 of 2001. After hearing the learned advocate appearing for the applicant – petitioner in that matter, the Court has rejected the said application on 17.06.2004.

6.The petitioner thereafter moved another Civil Application No. 4473 of 2005 praying for directions to the respondents restraining them from operating and implementing all their letters/orders/Circulars/Resolutions etc. and appointing the applicant as Food Inspector from retrospective effect, as due, in accordance with law. The applicant has also prayed for the similar relief which was asked for in the main petition. The applicant has also prayed for early hearing of the main petition. The Court has disposed of the said application on 19.07.2005 directing the office to list the main matter for final hearing on 16.08.2005 and further directing the parties to supply the written submissions and judgments, if any, on or before 11.08.2005. Since the main matter was already listed for final hearing, the Civil Application stood disposed of.

7.The petitioner thereafter filed M.C.A. No. 1969 of 2005 seeking revival and restoration of Civil Application No. 4473 of 2005 and also making prayer to keep the said Civil Application by way of an evidence along with Special Civil Application No. 6665 of 2001. The Court has passed an order on 26.09.2005 directing the office to keep the papers of the said Civil Application with the main matter for the purpose of relying upon the documents attached with the said Civil Application at the time of hearing of main matter. With this direction, the Court has disposed of the said application.

8.The petitioner thereafter moved Civil Application No. 10232 of 2005 challenging the order of removal dated 20.09.2005 passed by the Municipal Commissioner, Vadodara Municipal Corporation. The Court has directed to place this Civil Application along with the main

matter. Accordingly, the main matter and Civil Application No. 10232 of 2005 were heard together and are being disposed of by this common judgment and order.

9.It is the case of the petitioner that the petitioner had obtained requisite three months training in food inspection and sampling work on 01.05.1991 from the Food (Health) Authority of the State of Gujarat as required under Rule 8 (c) of the Prevention of Food Adulteration Rules. The petitioner stood first class in the said training of Food Inspector securing highest marks in written test and in Educational Aids presentation examination securing 82.5% of highest marks amongst their training group. The respondent – Corporation has not appointed the petitioner as Food Inspector after completion of the said satisfactory training required for the appointment of Food Inspector. The petitioner,

therefore, filed Special Civil Application No. 8563 of 1994 before this Court in July, 1994. The said petition was admitted and suitable directions were issued on 30.08.1994. The respondent – Corporation has thereafter appointed the petitioner as Food Inspector on 30.05.1995 subject to publication of Notification under Section 9 of Prevention of Food Adulteration Act, 1954. While appointing the petitioner as Food Inspector by an order dated 30.05.1995, it was made clear that the said appointment was subject to final outcome of the departmental inquiry initiated against the petitioner. It was also made clear in the said appointment order that the said appointments were given subject to publication of Notification under Section 9 of the Prevention of Food Adulteration Act, 1954.

10.It is also the case of the petitioner that the said appointment of Food Inspector was approved

by the Standing Committee of the respondent – Corporation vide its Resolution dated 01.06.1995. Thereafter, the said Resolution was approved by the General Board of respondent – Corporation on the same day i.e. 01.06.1995. Special Civil Application No. 8563 of 1994 filed by the petitioner was ordered to be heard along with Special Civil Application No. 7204 of 1988. While issuing rule, the Court has made clear in the petition that pendency of any matter relating to the subject matter of the said Special Civil Application shall be no impediment for the respondents to make appointment on the post of Food Inspector amongst the qualified and eligible candidates in accordance with law.

11.It is also the case of the petitioner that though the aforesaid order was passed with a specific clarification that it was not impediment for appointment of the petitioner as

Food Inspector, the respondent – Corporation has issued a letter dated 08.06.1995 informing the petitioner that no further proceedings can be taken to notify the petitioner as Food Inspector as the petitioner's case was subjudice. The petitioner therefore filed a pursis before this Court on 14.06.1995 for withdrawal of Special Civil Application No. 8563 of 1995 and order for withdrawal was accordingly passed by this Court on 16.06.1995. The petitioner has made it clear in the said pursis that withdrawal of the petition was without prejudice to the petitioner's rights and contentions to get lawful seniority in the cadre of Food Inspector in accordance with the law. The withdrawal would come into force with effect from the date of publication of the petitioner's notified appointment as Food Inspector in the Official Gazette of the State Government.

12.One women organization, namely, Sahiyar has filed Regular Civil Suit No. 1183 of 1995 in the Court of 3rd Joint Civil Judge (S.D.), Vadodara on 16.06.1995 challenging the appointment of Food Inspectors given by the respondent – Corporation to the petitioner was illegal. The interim injunction as prayed for was granted and because of that the petitioner's appointment as Food Inspector could not be made. The petitioner waited for his notified appointment as Food Inspector for quite some time. Since it was not made, the petitioner has filed Special Civil Application No. 2780 of 1996 on 12.04.1996. The said petition was dismissed on 19.04.1996. The Court has observed that it was not in dispute that the petitioner was appointed by the respondents on the post of Food Inspector only for six months. The order of appointment of the petitioner was dated 30.05.1995. This has already come to an end on 30.11.1995. The

prayer which has been made in the petition could not be granted as the appointment of the petitioner as Food Inspector was no more in force. It was a fixed term appointment which came to an end by efflux of time. Under Section 9 of the Prevention of Food Adulteration Food Inspector can be appointed after notification and not earlier. In view of this position, the petition did not survive. The Court further observed that sitting under Article 226 of the Constitution of India, this Court will not issue a writ of mandamus which is of no purpose. In fact issuing writ of mandamus in this case will be futile as appointment of the petitioner as Food Inspector has come to an end long back.

13.Being aggrieved by the said order of the Learned Single Judge, the petitioner has filed L.P.A. No. 513 of 1996 before this Court. The said appeal was disposed of on the basis of the

statement made by the learned advocate appearing for the respondent – Corporation. The statement was to the effect that the respondent – Corporation would make a proposal within one month from the date of the order i.e. 17.01.1997 for notifying the Food Inspectors. The Court has also taken note of the statement made by the learned Assistant Government Pleader stating that the State Government would take decision on the said proposal within two months thereafter.

14.Since the respondent – State Government has not issued Notification notifying the petitioner as Food Inspector even after passing reasonable period of more than three months after the Division Bench has passed an order, the petitioner has filed M.C.A. No. 1560 of 1997 for contempt. The State Government has thereafter issued Notification on 04.09.1997 notifying the petitioner as Food Inspector.

Since the said Notification was issued for appointment of the petitioner as Food Inspector, M.C.A. No. 1560 of 1997 was disposed of on 03.10.1997. The petitioner was notified and appointed as Food Inspector at Sr. No. 25 by the State Government under Notification dated 04.09.1997 which was published in the Official Gazette on 18.09.1997. However, by virtue of the injunction of the Labour Court, the appointment could not be effected. The said injunction was also vacated on 29.11.197 and thereafter, the petitioner wrote several letters and reminders. However, no action was taken by the respondent – Corporation.

15.The petitioner has thereafter been issued a notice on 05.01.1998 wherein it was stated that the petitioner was not discharging his duty as Junior Clerk. The State Government is the notifying authority whereas the appointing authority is the Corporation and unless and

until the order is issued by the Corporation, the petitioner is supposed to discharge his duty as Junior Clerk. If the petitioner will not discharge his duty as Junior Clerk, necessary actions may be taken against the petitioner. The petitioner has objected to the said notice and submitted his reply.

16. Since the petitioner was not allowed to work as Food Inspector, the petitioner has filed Special Civil Application No. 750 of 1998 before this Court. An order was passed by this Court on 18.03.1998. Though the rule was issued, the Court has observed that as the petitioner has prayed the same relief by way of interim relief, the interim relief as prayed for could not be granted otherwise it would amount to allowing the petition at that stage and, therefore, the interim relief as prayed for was refused. The respondent – Corporation has thereafter passed the order of suspension

on 18.05.1998 on the ground that the petitioner was unauthorizedly absent from duty since February 1998 seeking different kinds of leaves. During the subsistence of the said suspension order, the petitioner has even refused to accept the subsistence allowance which has offered to him in accordance with law. This Court has passed further order on 27.01.2000 in Special Civil Application No. 750 of 1998 observing that the eligibility of several Food Inspectors appointed prior to the year 1985 was questioned and pursuant to the same, some Food Inspectors were reverted to the post of Sanitary Inspectors or on the original post they held. Feeling aggrieved, such Food Inspectors have filed various writ petitions before this Court which were pending before the Division Bench. Since in one of such petitions, interim relief was granted, the petitioner, though was appointed as the Food Inspector, was not assigned the

duty of Food Inspector and was continued as a Clerk. The Court has also observed that the petitioner made a representation to the Commissioner of the Corporation and demanded assignment of duties as a Food Inspector. In reply to this, the petitioner has been informed by the respondent – Corporation that the Corporation being the appointing authority, shall appoint the notified Food Inspectors as and when requirement arises. However, there was no compulsion upon the Corporation to appoint all such Food Inspectors who were notified by the Notification issued under Section 9 of the Act. The Court has also prima facie expressed its opinion in the said order that on reading the provisions contained in Section 9 of the Act, it does appear that the Government is required to appoint the Food Inspectors by issuing a Notification as envisaged under the said Section. Since precisely this issue was involved in the

matters which were pending before the Division Bench, the Court has not expressed any opinion on the construction of Section 9 and the effect of Notification issued under the said section and directed this petition to be posted before the Division Bench to be heard along with Special Civil Application No. 4188 of 1995 and other allied matters.

17.Special Civil Application No. 4188 of 1995 and other allied matters came up for hearing before the Division Bench of this Court and the entire group was decided on 20.12.2000. The Court has examined the entire issue thread-bare and after discussing about the controversy in light of the relevant statutory provisions and the rules framed thereunder, it was held that the Court was not inclined to entertain the said group of petitions for examining the contention that the petitioners were not responsible for not sending them for 90 days training between

01.03.1980 and 31.03.1985. Some of the employees such as three employees covered by Special Civil Application No. 1917 of 1991 were appointed as Food Inspectors in the year 1981-82 by a Notification in the Official Gazette. This might have been done because the local authorities did not have eligible persons who could be notified as Food Inspectors when the Government amended the Rule, but mere notification of a person as a Food Inspector in the official gazette does not confer upon him any substantive right to hold a post as such, and it cannot be said that not continuing a person as Food Inspector or denotifying his name as Food Inspector by issuing a notification to that effect in the official gazette would amount to terminating his services or removing him from the post of Food Inspector. All that would happen upon issuance of notification under Section 9 of the Act denotifying any employee from the designation

of Food Inspectors would be that the employees holding the posts of Sanitary Inspector would cease to have the powers of Food Inspectors under the Prevention of Food Adulteration Act, but they will continue to remain in the substantive cadre of Sanitary Inspectors and in the same pay-scale. In view of this finding given by the Division Bench, all Special Civil Applications and Letters Patent Appeals were dismissed.

18.Based on the aforesaid judgment of the Division Bench, the same Division Bench has also passed an order on 20.12.2000 in Special Civil Application No. 750 of 1998 wherein it is observed that in view of the finding recorded by the Division Bench in the judgment delivered on the same day in Special Civil Application No. 1917 of 1991 and other cognate petitions that the post of Food Inspector is not a substantive post as such, but an employee of a

local authority is to be designated as a Food Inspector by notifying his name as a food Inspector in the official gazette, it cannot be said that the petitioner was substantively appointed as a Food Inspector. The Court has further observed that in any view of the matter, as far as the present petition is concerned, it appears that he was facing a departmental inquiry. The Court, therefore, did not see any reason to entertain the said petition and the petitioner has no substantive right to work as a Food Inspector as it is within the domain of the local authority to decide as to which of its employees notified as Food Inspectors in the official gazette are to be assigned duties of Food Inspectors. The Court has also observed that as far as the communication dated 05.01.1988 is concerned, the Court did not find any fault with the same as the Corporation has pointed out that the petitioner could not be assigned the duties of

a Food Inspector when no such workload was available with the Corporation. The Court, therefore, disposed of the petition without going into the merits of the charges levelled against the petitioner which were to be duly adjudicated in the departmental inquiry. Such inquiry was directed to be disposed of as expeditiously as possible and preferably within three months from the date of receipt of the writ of the Court or a certified copy of the said order, whichever was earlier.

19.Pursuant to the aforesaid order of the Division Bench, the departmental inquiry was completed and order was passed by the Deputy Municipal Commissioner (Administration) on 14.07.1991. By virtue of the said order, penalty was imposed on the petitioner for stoppage of one increment with future effect and the petitioner was reinstated in the Gas project as Junior Clerk.

20.It is this order which is under challenge in the present petition.

21.The petitioner appearing as party-in-person has raised several issues for consideration of this Court. The first issue raised by the petitioner is that the petitioner was appointed as Food Inspector by the Local authority of the Vadodara Municipal Corporation and the petitioner was also appointed as Food Inspector by the State Government for the local authority of the Vadodara Municipal Corporation and the petitioner was also continued as such and appointed and notified as Food Inspector. By virtue of his appointment as Food Inspector, the petitioner's lien to initial cadre was suspended for any other cadre. In support of this submission, the petitioner has submitted that the State Government is empowered to delegate its power for appointment of Food

Inspector to local authorities under Section 24(2)(e) of the Prevention of Food Adulteration Act, 1954. The local authorities are empowered by the State Government for the appointment of their own Food Inspectors vide Rule 4 (3) of the Gujarat Prevention of Food Adulteration Rules, 1961 vide Notification dated 23.08.1961. The Municipal Commissioner is empowered to exercise powers and perform duties of Corporation under the Prevention of Food Adulteration Act, Rules and State Rules subject to restrictions, limitations, conditions imposed by the Corporation and the Commissioner can appoint Food Inspector with the approval of the Standing Committee and such Food Inspector will work under the control of the Commissioner as per Section 68 of the Bombay Provincial Municipal Corporation Act, 1949. The Municipal Corporation is empowered to make direct recruitment of Food Inspectors from Municipal service without advertisement under Rule 2 of

Chapter III of appended Schedule A of the Bombay Provincial Municipal Corporation Act, 1949. The Municipal Commissioner is empowered to make permanent or temporary appointments of Food Inspectors and in case of permanent appointments, the Commissioner should get approval of Standing Committee for statement of designation grades, salaries and the Commissioner is empowered to make permanent appointment of Food Inspector for the period above six months with previous approval of the Standing Committee under Section 53 (3) of the Bombay Provincial Municipal Corporation Act, 1949. The petitioner was deemed to have been appointed as Food Inspector. He was not notified and appointed as Food Inspector even after two proposals forwarded by the respondent – Corporation. Thereafter, only because of the contempt petition filed by the petitioner, the State Government has issued the Notification for appointment of the petitioner as Food

Inspector on 18.09.1997. The petitioner was continued as such as Food Inspector by the local authority of Vadodara Municipal Corporation after being appointed as Food Inspector by the said local authority as well as after being appointed and notified as Food Inspector by the State Government. In this connection, he invited the Court's attention to Rule 19 of the Bombay Civil Services Rules, 1959. Rule 19 (a) states that a competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a tenure post, or provisionally to a post on which another Government servant would hold lien and had his lien not been suspended under this rule. Rule 19 (b) says that a competent authority may, at its opinion suspend the lien of a Government servant on a permanent post which he holds substantively if he is deputed out of India or

transferred to Foreign service, or in circumstances not covered by clause (a) of this rule, is transferred, in a officiating capacity, to a post in another cadre and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years. Based on these rules, the petitioner has submitted that the petitioner was entitled to work as Food Inspector and while passing the order regarding stoppage of one increment with future effect and directing the petitioner to work as Junior Clerk in Gas project, the respondent – Corporation has committed a glaring error and ignored these rules which are binding and having statutory force. The order under challenge is, therefore, required to be quashed and set aside.

22.He has further submitted that in all six

charges were levelled against the petitioner in the charge-sheet. The charges are (1) for unauthorised leave and absence from 28.07.1997 to 19.05.1998 during duties as Junior Clerk, (2) charge for being irregular, rash, negligent, indiscipline, autonomous behaviour and no interest in establishment during duties as Junior Clerk in Sanitary Section of Ward No. 9(I) from July 1997 onwards, (3) charge for obstructing essential services of sanitary section regarding sweeping and autonomous behaviour during duties as Junior Clerk from July 1997 onwards, (4) charge for misconduct, indiscipline and autonomous behaviour contravening Rule 619 of the Bombay Civil Service Rules, 1959, (5) charge for contravention of orders of superior, intentional avoidation of duties though naturally bound to do duties as Junior Clerk and thus having lack of devotion to duties, (6) contravention of Circular No. 67/91-92 dated

17.01.1992 regarding pre-sanctioning of leave. He has submitted that he has filed detailed written statement running into 105 pages, written arguments running into 85 pages, reply to the show-cause notice running into 26 pages and without considering the same, the order regarding stoppage of one increment with future effect and reinstatement as Junior Clerk was passed by the Disciplinary Authority.

23.Since the petitioner has not resumed his duty as Junior Clerk, the Municipal Commissioner, Vadodara Municipal Corporation has passed an order on 20.09.2005 stating that despite the order passed by the Deputy Commissioner on 14.07.2001 reinstating the petitioner as Junior Clerk, the petitioner has not resumed his duty which shows that he was not interested in service of the respondent – Corporation. During the course of departmental inquiry, it is proved that the petitioner has acted as not

befitting a Govt. employee and it would affect the discipline of the Corporation and it would also adversely affect to other employees of the respondent – Corporation. The respondent – Corporation is an autonomous body depending on the public funds and the conduct of the petitioner could not be tolerated and he has lost the confidence of the Corporation. Accordingly, the Disciplinary Authority was in agreement of the Inquiry Officer and under Section 56(2)(j) of the Act, the petitioner was removed from service.

24.It is this order which is under challenge in Civil Application No. 10232 of 2005.

25.After having heard the petitioner as party-in-person and Mr. Pranav G. Desai, learned advocate appearing for the respondent – Corporation and after having gone through the entire previous record of this case and various

proceedings initiated by or against the petitioner before this Court and various orders passed in those proceedings and petitions as well as Letters Patent Appeals and after having gone through the relevant Rules, Acts, statutory provisions and service rules pertaining to the issues raised before the Court, the Court is of the view that there is no dispute about the fact that the petitioner was initially appointed as Food Inspector. However, that appointment was subject to certain conditions, more particularly, the appointment was initially for a period of six months. It was subject to the pending departmental inquiry and it was also subject to issuance of the notification by the State Government. Once the period of six months was over, even this Court has not granted any relief to the petitioner and challenge raised against not continuing the petitioner as Food Inspector was rejected by this Court on the

ground that the period of six months was over. It is true that the State Government has issued Notification only after the contempt proceedings were filed and pursuant thereto, the petitioner has found his place in the said Notification. However, initially because of the stay granted by the lower Court and thereafter the stand was taken by the respondent – Corporation that there was no vacancy for the post of Food Inspector and as and when the vacancy arises, the directions will be issued to promote the petitioner to the post of Food Inspector. Despite the fact that the petitioner's appointment as food Inspector was not made and despite the fact that this Court has also passed several orders directing the petitioner to work as Junior Clerk without prejudice to his rights and contentions raised in the petition, the petitioner has not accepted the work of Junior Clerk and he did not resume on duty. Once the Division Bench of

this Court has held that the post of Food Inspector is not a substantive post and the petitioner cannot be appointed on that post since he was already holding a substantive post as a Junior Clerk, there is no other option for the respondent – Corporation but to reinstate the petitioner as Junior Clerk. All these contentions which have been raised by the petitioner with regard to his right to be appointed as Food Inspector fell into insignificance in view of the binding decision given by the Division Bench of this Court and based on that, the petitioner's petition was also disposed of by this Court. If the petitioner has any grievance, the petitioner should have taken the order of the Division Bench before the Hon'ble Supreme Court. But the respondent authority and even this Court is bound by the decision of the Division Bench and the petitioner has to work as a Junior Clerk. The petitioner has pointed out that the order

of Division Bench is challenged before the Hon'ble Supreme Court and Special Leave Petitions were admitted and stay is granted against the implementation and operation of the order. He has produced the copy of the order passed by the Hon'ble Supreme Court in SLP (Civil) Nos. 5454-5455 of 2001 dated 04.02.2002 and 26.08.2002. However, till the order and judgment is reversed by the Hon'ble Supreme Court, it is binding on this Court. Despite specific order passed by the respondent – Corporation, the petitioner has not even worked as a Junior Clerk and ultimately his services were terminated and he was removed as a Junior Clerk from the service of the respondent – Corporation which order is challenged in Civil Application No. 10232 of 2005.

26.The Court is, therefore, of the view that the relief claimed in the present petition cannot be granted and the impugned order which was

passed against the petitioner does not call for any interference by this Court in view of the charges levelled against the petitioner were proved and the Inquiry Officer as well as Disciplinary Authority have taken the same decision with which the Court is in agreement.

27.Since the issue raised by the petitioner in Civil Application No. 10232 of 2005 is altogether a different issue and it gives rise to a fresh cause of action, the legality and validity of that order cannot be decided in the present petition or even challenge cannot be raised by way of filing Civil Application and hence, the Court is not expressing any opinion on the merits of the Civil Application. It is open for the petitioner to challenge the said removal order in a substantive petition.

28.In view of the aforesaid discussion, the order passed by the Deputy Municipal Commissioner for

stoppage of one increment with future effect and the reinstatement of the petitioner as Junior Clerk is hereby confirmed. The petition is accordingly dismissed without any order as to costs. Rule discharged.

29.In view of the finding given in main petition, Civil Application No. 10232 of 2005 is also disposed of.

[K.A. PUJ, J.]

S*avariya*